

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Application for Waiver

Docket No. RM2021-5

PUBLIC REPRESENTATIVE COMMENTS
(April 6, 2021)

I. INTRODUCTION

The Public Representative hereby provides comments in response to Commission Order No. 5854.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, that address the Postal Service's application for waiver pursuant to 39 C.F.R. § 3030.286, requesting that the Commission waive the applicability of 39 C.F.R. § 3030.284 as it relates to the First-Class Mail Letters 5-Digit Automation workshare discount in the next rate adjustment filing.²

II. BACKGROUND

As part of its 10 year review pursuant to 39 U.S.C. § 3622(d)(3), the Commission promulgated new rules to address inefficient workshare discounts. The rules allow for the Postal Service to seek permission to set workshare discounts that do not comply with the requirements of 39 C.F.R. §§ 3030.283 and 3030.284.³

In this docket, the Postal Service filed its first waiver request under these rules. It claims that "increasing the workshare discount for 5-Digit presort First-Class Mail by 0.5

¹ Notice and Order Concerning Postal Service Application for Waiver Under 39 Cfr 3030.286, March 30, 2021 (Order No. 5854).

² United States Postal Service Application for Waiver Under 39 CFR 3030.286, March 26, 2021 (Application).

³ Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020 (Order No. 5763).

cents in a single year could decrease the efficiency of its processing operations.” Application, Statement in Support⁴ at 1. The Postal Service notes that the current discount of 3.0 cents results in a passthrough of 73 percent, and that it would be required to increase the discount by 0.5 cents absent a waiver. *Id.* at 1-2. It asserts that the required change “could lead to unpredictable changes among the relative proportions of mail volumes sorted to 5-Digit, Auto AADC, and Mixed AADC.” *Id.* at 2.

IV. COMMENTS

The Postal Service seeks a waiver based on its “belief that increasing the workshare discount for 5-Digit presort First-Class Mail by 0.5 cents in a single year could decrease the efficiency of its processing operations, as described in subsection (c)(5) of Rule 286.” *Id.* at 1. It however, provides no documentation to support its belief. In fact, the Postal Service’s filing comes nowhere near the preponderance of evidence standard required to obtain a favorable ruling by the Commission. Rule 286 states that “Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.” 39 C.F. R. § 3030.286(b).

The Postal Service did not support its assertion that a 0.5 cent increase in the discount *could* decrease the efficiency of its processing operations. But, even if the Postal Service had supported that claim, a much higher standard than “*could*” should be applied when considering a waiver. A decrease in operational efficiency should at least be *likely* to happen before it is considered a potential reason for granting a waiver. And, if a likely decrease in processing efficiency were demonstrated, the Commission should still consider other factors, and weigh the potential harm caused by a decrease in processing efficiency, with the potential harm caused by inefficient price signals.

⁴ Statement in Support of Waiver Application Sharon Owens, Vice President, Pricing, U.S. Postal Service, attached to Application (Statement in Support).

The Postal Service also asserted that the required increase “could lead to unpredictable changes among the relative proportions of mail volumes sorted to 5-Digit, Auto AADC, and Mixed AADC.” However, the Postal Service provided no evidence to substantiate this claim either. Nor did it even assert the more relevant claims that such an unpredictable change would be likely to happen and that, if so, it would likely impede efficient operation of the Postal Service as required by § 3030.286(g). It also failed to explain why it would not be able to respond to such unpredictable changes, or how its inability to respond results in operational inefficiencies.

The Postal Service also provided no explanation for why it is unable to increase the discount by any amount. The Postal Service’s filing refers to the required increase as a “dramatic change.” However, it did not explain how a less dramatic change would impede its operations. It offered no alternative to the required increase except to maintain the 5-Digit discount at 3.0 cents in the upcoming price change.

The Public Representative cannot properly evaluate the Postal Service’s assertions without quantitative evidence demonstrating the likely harm to Postal Service. Discounts change from year to year, so the Postal Service has to show why this particular change would have dire effects. Noting that the change is relatively large compared with recent years, does not prove that the Postal Service would be unable to adjust its operations in response to the resulting change in volume in this instance.

As part of Order No. 4257,⁵ the Commission concluded that the Postal Service failed to set most workshare discounts in accordance with Efficient Component Pricing (ECP) during the 10 years following the enactment of the PAEA. Order No. 4257 at 136-138. The Commission’s revised workshare rules can only address the need to set discounts more efficiently and consistent with ECP if they are reasonably enforced.

⁵ Docket No. RM2017-3, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, December 1, 2017.

V. CONCLUSION

For the reasons discussed above, the Public Representative urges the Commission to deny the Postal Service's waiver request. The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

Katalin K. Clendenin
Public Representative

901 New York Ave., N.W. Suite 200
Washington, D.C. 20268-0001
(202) 789-6860; Fax (202) 789-6891
katalin.clendenin@prc.gov